

II. REMARKS

The Examiner is requested to reconsider the above-identified patent application as amended. It is believed that no new matter has been added, and favorable action is respectfully requested.

Allowance:

In the Office Action on pages 1 and 11, claims 1, 3, 5, 7, 9, 11, 13, 15, 17-21, 23, 25, 27-29, 31, 33-41, 48-50, 52-55, 57-68, and 70 have been allowed.

In response, Applicant expresses appreciation for the examination and allowance.

Responses to 35 U.S.C. 101 claim rejections:

In the Office Action on pages 3-4, claims 42-47, 51, 56, 69, 71-72 have been rejected pursuant to 35 U.S.C. 101. The Examiner contends that these claims as a whole are directed merely to an abstract idea.

The rejection is traversed in that a prima facie case of "abstract idea" has not been made out, but the rejection is believed to be moot in view of the amendment to claims 42-47, 51, which implicate dependent claims 69, 71-72.

Responses to 35 U.S.C. 103 claim rejections:

At page 4, third paragraph of the Final Action, claims 42-47, 56, 69, 71-72, have been rejected pursuant to 35 U.S.C. Sec. 103. The Examiner contends that these claims are obvious over Graff US Patent 6,192,347, henceforth denoted as "Graff '347".

In response, Applicant respectfully traverses these claim rejections and again requests an interview.

The rejections are believed to be improper because there is at least one claim element in each rejected claim that has not shown to be disclosed in Graff '347, and thus a prima facie

case of obviousness has not been made out.

More particularly, for example, the claim element terminal rent recovery period is an element in every rejected claim but the Examiner has not shown that this claim element is disclosed in Graff '347.

For example, regarding claim 42, the only support offered in the Final Rejection for the Examiner's contention that Graff '347 discloses the claim element "terminal rent recovery period" is the following statement at page 5, lines 1-11:

"Even though Graff does not explicitly recite terminal recovery period (**applicant recites in the disclosure, 0064, Terminal Recover Period is a reserved time period at the end of the lease, during which to evict the lessee if the financing has not been satisfied**). In addition, applicant as disclosed in the specification, Terminal Recovery Period is a Random number since the applicant is not using any disclosed Formula(e) to determine the Terminal Recovery Period (see para 0065). Graff teaches in the event of default or insolvency, number of days landlord has provisioned for Terminal Recovery Period [Graff, col. 53 line 19 - col. 54, line 53]. Therefore, it would have been obvious to one of ordinary skill in the art that Graff teaches concept and capability wherein at least one of the valuations can reflect that there is a terminal rent recovery period for the residential estate for years interest;"

The above-quoted statement contains several mischaracterizations and misstatements. First, the statement mischaracterizes paragraph [0064] by suggesting in the boldface portion of the citation that the paragraph **defines terminal rent recovery period** for purposes of the Specification. Instead, Paragraph [0064] merely states one potential functional application of a terminal rent recovery period; the actual definition of terminal rent recovery period is presented subsequently, in paragraph [0065] of the Specification, as follows:

[0065] More specifically, a **terminal rent recovery period** is a period at the end of the lease on the residential estate for years interest of at least four months - usually at least six months, preferably at least eight months, frequently at least a year, sometimes as much as a year and a half, and possibly even two years or more - during which the rent is essentially free, i.e., the sum of the (undiscounted) net rent payments during the terminal rent recovery period is zero or very close to zero, and in any case is no more than one-half the average (undiscounted) net rent

payment over the portion of the lease term that precedes the terminal rent recovery period.

(emphasis added by Applicant). Further, the definition includes the relevant limitation that a terminal rent recovery period has a length of at least four months.

The Specification states at paragraph [0064] that one potential functional application of a terminal rent recovery period is to provide:

"...a reserve time period at the end of the lease term during which to evict the lessee if the financing already has not been essentially retired as scheduled and re-let the property to defray any deficiency."

Although the Examiner contends in the above-quoted section from the Final Rejection that Graff '347 teaches the claimed terminal rent recovery period somewhere in Graff, col. 53 line 19 - col. 54, line 53, Applicant does not understand how anything in the Examiner's cited columns and lines in Graff '347 relates to defraying a financial deficiency except possibly for the following material at col. 53, lines 61-65:

DEFINITION OF DEFAULT: Any of the following events constitutes a default under the lease: failure by Tenant to pay monthly Rent when due, together with failure to pay within ten (10) days after Landlord serves Tenant with written notice of past due Rent;

Although these lines may appear to relate to defraying a financial deficiency, they actually teach away from the concept of a terminal rent recovery period for at least two reasons": (1) they teach a period of no more than ten days in length, which is at least a dozen times smaller than a "terminal rent recovery period", and (2) **they teach a late rental grace period** following the rental due date **that enables the tenant to avoid default and eviction risk** by paying the overdue rent.

More generally, regarding the Examiner's contention in the above citation that Graff '347 teaches terminal rent recovery period somewhere in Graff, col. 53 line 19 - col. 54, line 53, Applicant does not understand how anything in the Examiner's cited columns and lines in Graff '347 relates to the definition of terminal rent recovery period in paragraph [0065] of the

Specification as "a period of at least four months in length during which the rent is essentially free."

Accordingly, the Final Rejection is premised on an erroneous finding that Graff '347, col. 53, line 19 – col. 54, line 53 teaches terminal rent recovery period because, in fact, there is no such teaching.

Since the Examiner nevertheless contends that Graff '347, col. 53, line 19 – col. 54, line 53, does teach the claimed terminal rent recovery period, pursuant to Rule 104 and 35 U.S.C. Sec. 132, Applicant hereby requires *information* as to what in Graff '347, at col. 53, line 19 – col. 54, line 53, provides the basis for the Examiner's interpretation. Absent this information, the contentions and rejections with regard to claim 42 and its dependent claims, if any, and also the other claims that mention terminal rent recovery period, are improper pursuant to Rule 104 and 35 U.S.C. Sec. 132.

Additionally, Applicant also respectfully traverses the Examiner's other contentions with regard to claim 42, including the Examiner's finding on page 5 with respect to the absence from the Specification of a formula for terminal rent recovery period: "Terminal Recovery Period is a Random number since the applicant is not using any disclosed Formula(e) to determine the Terminal Recovery Period (see para. 0065).

There is no statement regarding a random number in Para. 65, a formula is not a requirement for patentability, and the absence of a formula does not necessitate that input is a random number. Indeed, as mentioned above, the Specification teaches that "a **terminal rent recovery period** is a period at the end of the lease on the residential estate for years interest of **at least four months....**" which explicitly precludes a random number. In sum, the Examiner's finding is in error.

Claim 43 has been rejected at page 6, lines 6-18, as being unpatentable over Graff '347, citing Graff '347, col. 53, line 19 – col. 54, line 53, Fig. 1, and the associated disclosure.

The rejection is respectfully traversed, as previously noted in the first Office Action

Response and as responded above with regard to claim 42, the claim element terminal rent recovery period is among the claim 43 claim elements not disclosed in Graff '347.

Since the Examiner nevertheless contends that Graff '347, col. 53, line 19 – col. 54, line 53, Fig. 1, and the associated disclosure does teach the claimed terminal rent recovery period, pursuant to Rule 104 and 35 U.S.C. Sec. 132, Applicant hereby requires *information* as to what in Graff '347, col. 53, line 19 – col. 54, line 53, Fig. 1, and the associated disclosure, provides the basis for the Examiner's interpretation. Absent this information, the contentions and rejections with regard to claim 43 and its dependent claims, if any, and also the other claims that mention terminal rent recovery period, are improper pursuant to Rule 104 and 35 U.S.C. Sec. 132.

Applicant also respectfully traverses the Examiner's other contentions with regard to claim 43 because, absent the above-mentioned *information* the rejection cannot be understood in context. Thus, the rejection is improper pursuant to Rule 104 and Sec. 132.

Claim 44 has been rejected at page 6, last 3 lines – page 7, line 13, as being unpatentable over Graff '347, citing Graff '347, col. 53, line 19 – col. 54, line 53, Fig. 1, and the associated disclosure.

As previously responded in the first Office Action Response and as responded above with regard to claim 42, that the claim element terminal rent recovery period is among the claim 44 claim elements not disclosed in Graff '347.

Since the Examiner nevertheless contends that Graff '347, col. 53, line 19 – col. 54, line 53, Fig. 1, and the associated disclosure does teach the claimed terminal rent recovery period, pursuant to Rule 104 and 35 U.S.C. Sec. 132, Applicant hereby requires *information* as to what in Graff '347, col. 53, line 19 – col. 54, line 53, Fig. 1, and the associated disclosure, provides the basis for the Examiner's interpretation. Absent this information, the contentions and

rejections with regard to claim 44 and its dependent claims, if any, and also the other claims that mention terminal rent recovery period, are improper pursuant to Rule 104 and 35 U.S.C. Sec. 132.

Applicant also respectfully traverses the Examiner's other contentions with regard to claim 44 because, absent the above-mentioned *information* the rejection cannot be understood in context. Thus, the rejection is improper pursuant to Rule 104 and Sec. 132.

Claim 45 has been rejected at page 7, last 7 lines – page 8, line 8, as being unpatentable over Graff '347, citing Graff '347, col. 53, line 19 – col. 54, line 53, Fig. 1, and the associated disclosure. Applicant responds, as previously responded in the first Office Action Response and as responded above with regard to claim 42, that the claim element terminal rent recovery period is among the claim 45 claim elements not disclosed in Graff '347.

Since the Examiner nevertheless contends that Graff '347, col. 53, line 19 – col. 54, line 53, Fig. 1, and the associated disclosure does teach the claimed terminal rent recovery period, pursuant to Rule 104 and 35 U.S.C. Sec. 132, Applicant hereby requires *information* as to what in Graff '347, col. 53, line 19 – col. 54, line 53, Fig. 1, and the associated disclosure, provides the basis for the Examiner's interpretation. Absent this information, the contentions and rejections with regard to claim 45 and its dependent claims, if any, and also the other claims that mention terminal rent recovery period, are improper pursuant to Rule 104 and 35 U.S.C. Sec. 132.

Applicant also respectfully traverses the Examiner's other contentions with regard to claim 45 because, absent the above-mentioned *information* the rejection cannot be understood in context. Thus, the rejection is improper pursuant to Rule 104 and Sec. 132.

Claim 46 has been rejected at page 8, line 9 – page 9, line 2, as being unpatentable over Graff '347, citing Graff '347, col. 53, line 19 – col. 54, line 53, Fig. 1, and the associated disclosure. Applicant responds, as previously responded in the first Office Action Response

and as responded above with regard to claim 42, that the claim element terminal rent recovery period is among the claim 46 claim elements not disclosed in Graff '347.

Since the Examiner nevertheless contends that Graff '347, col. 53, line 19 – col. 54, line 53, Fig. 1, and the associated disclosure does teach the claimed terminal rent recovery period, pursuant to Rule 104 and 35 U.S.C. Sec. 132, Applicant hereby requires *information* as to what in Graff '347, col. 53, line 19 – col. 54, line 53, Fig. 1, and the associated disclosure, provides the basis for the Examiner's interpretation. Absent this information, the contentions and rejections with regard to claim 46 and its dependent claims, if any, and also the other claims that mention terminal rent recovery period, are improper pursuant to Rule 104 and 35 U.S.C. Sec. 132.

Applicant also respectfully traverses the Examiner's other contentions with regard to claim 46 because, absent the above-mentioned *information* the rejection cannot be understood in context. Thus, the rejection is improper pursuant to Rule 104 and Sec. 132.

Claim 47 has been rejected at page 9, line 3 – page 9, end of page, as being unpatentable over Graff '347, citing Graff '347, col. 53, line 19 – col. 54, line 53, Fig. 1, and the associated disclosure. Applicant responds, as previously responded in the first Office Action Response and as responded above with regard to claim 42, that the claim element terminal rent recovery period is among the claim 47 claim elements not disclosed in Graff '347.

Since the Examiner nevertheless contends that Graff '347, col. 53, line 19 – col. 54, line 53, Fig. 1, and the associated disclosure does teach the claimed terminal rent recovery period, pursuant to Rule 104 and 35 U.S.C. Sec. 132, Applicant hereby requires *information* as to what in Graff '347, col. 53, line 19 – col. 54, line 53, Fig. 1, and the associated disclosure, provides the basis for the Examiner's interpretation. Absent this information, the contentions and rejections with regard to claim 47 and its dependent claims, if any, and also the other claims that mention "terminal rent recovery period", are improper pursuant to Rule 104 and 35 U.S.C.

Sec. 132.

Applicant also respectfully traverses the Examiner's other contentions with regard to claim 47 because, absent the above-mentioned *information* the rejection cannot be understood in context. Thus, the rejection is improper pursuant to Rule 104 and Sec. 132.

Regarding claim 56, the Examiner rejects the claim at page 10, line 1 – page 10, line 14, as being unpatentable over Graff '347, citing Graff '347, col. 53, line 19 – col. 54, line 53, Fig. 1, and the associated disclosure. Applicant responds, as previously responded in the first Office Action Response and as responded above with regard to claim 42, that the claim element "terminal rent recovery period" is among the claim 56 claim elements not disclosed in Graff '347.

Since the Examiner nevertheless contends that Graff '347, col. 53, line 19 – col. 54, line 53, Fig. 1, and the associated disclosure does teach the claimed terminal rent recovery period, pursuant to Rule 104 and 35 U.S.C. Sec. 132, Applicant hereby requires *information* as to what in Graff '347, col. 53, line 19 – col. 54, line 53, Fig. 1, and the associated disclosure, provides the basis for the Examiner's interpretation. Absent this information, the contentions and rejections with regard to claim 56 and its dependent claims, if any, and also the other claims that mention "terminal rent recovery period", are improper pursuant to Rule 104 and 35 U.S.C. Sec. 132.

Applicant also respectfully traverses the Examiner's other contentions with regard to claim 56 because, absent the above-mentioned *information* the rejection cannot be understood in context. Thus, the rejection is improper pursuant to Rule 104 and Sec. 132.

Claim 69 has been rejected at page 10, lines 15-16, as unpatentable over Graff '347, stating as support at lines 15-16 that "Graff ('347) teaches capability and concept wherein the documentation can include a financial document." Applicant respectfully traverses the Examiner's contention and requires evidence to support the Examiner's contention regarding

"capability and concept" especially because the claim element terminal rent recovery period is among the claim 69 claim elements not disclosed in Graff '347.

Since the Examiner nevertheless contends that Graff '347, col. 53, line 19 – col. 54, line 53, Fig. 1, and the associated disclosure does teach the claimed terminal rent recovery period, pursuant to Rule 104 and 35 U.S.C. Sec. 132, Applicant hereby requires *information* as to what in Graff '347, col. 53, line 19 – col. 54, line 53, Fig. 1, and the associated disclosure, provides the basis for the Examiner's interpretation. Absent this information, the contentions and rejections with regard to claim 69 and its dependent claims, if any, and also the other claims that mention terminal rent recovery period, are improper pursuant to Rule 104 and 35 U.S.C. Sec. 132.

Applicant also respectfully traverses the Examiner's other contentions with regard to claim 69 because, absent the above-mentioned *information* the rejection cannot be understood in context. Thus, the rejection is improper pursuant to Rule 104 and Sec. 132.

Claim 71 has been rejected at page 10, lines 17-18, as unpatentable over Graff '347, stating as support at lines 17-18 that "Graff ('347) teaches capability and concept wherein the terminal rent recovery period can have a length of at least two years." Applicant respectfully traverses the Examiner's contention and requires evidence to support the Examiner's contention regarding "capability and concept" especially because the claim element terminal rent recovery period is among the claim 69 claim elements not disclosed in Graff '347.

Since the Examiner nevertheless contends that Graff '347, col. 53, line 19 – col. 54, line 53, Fig. 1, and the associated disclosure does teach the claimed terminal rent recovery period, pursuant to Rule 104 and 35 U.S.C. Sec. 132, Applicant hereby requires *information* as to what in Graff '347, col. 53, line 19 – col. 54, line 53, Fig. 1, and the associated disclosure, provides the basis for the Examiner's interpretation. Absent this information, the contentions and rejections with regard to claim 71 and its dependent claims, e.g., claim 72, and also the other

claims that mention terminal rent recovery period, are improper pursuant to Rule 104 and 35

U.S.C. Sec. 132.

Applicant also respectfully traverses the Examiner's other contentions with regard to claim 71 because, absent the above-mentioned *information* the rejection cannot be understood in context. Thus, the rejection is improper pursuant to Rule 104 and Sec. 132.

Claim 72 has been rejected at page 11, lines 1-2, as unpatentable over Graff '347, stating as support at lines 1-2 that "Graff ('347) teaches capability and concept wherein the residential property can be a single-family dwelling." Applicant respectfully traverses the Examiner's contention and requires evidence to support the Examiner's contention regarding "capability and concept" especially because the claim element single-family dwelling is among the claim 72 claim elements not disclosed in Graff '347; nor is terminal rent recovery period mentioned either.

Since the Examiner nevertheless contends that Graff '347 does teach the claimed single-family dwelling, pursuant to Rule 104 and 35 U.S.C. Sec. 132, Applicant hereby requires *information* as to what in Graff '347 provides the basis for the Examiner's interpretation. Absent this information, the contentions and rejections with regard to claim 72 and its dependent claims, if any, and also the other claims that mention "single-family dwelling", are improper pursuant to Rule 104 and 35 U.S.C. Sec. 132.

Applicant also respectfully traverses the Examiner's other contentions with regard to claim 72 because, absent the above-mentioned *information* the rejection cannot be understood in context. Thus, the rejection is improper pursuant to Rule 104 and Sec. 132.

III. CONCLUSION

With respect to the present application, the Applicant hereby rescinds any disclaimer of claim scope made in the parent application or any predecessor or related application. The Examiner is advised that any previous disclaimer, if any, and the prior art that it was made to avoid, may need to be revisited. Nor should a disclaimer, if any, in the present application be read back into any predecessor or related application.

APPLICANT CLAIMS SMALL ENTITY STATUS. The Commissioner is hereby authorized to charge any fees associated with the above-identified patent application or credit any overcharges to Deposit Account No. 50-0235, and if any extension of time is needed to reply to said office action, this shall be deemed a petition therefore. Please direct all communication to the undersigned at the address given below.

Respectfully submitted,



Date: 16 February 2012

Peter K. Trzyna
(Reg. No. 32,601)
(Customer No. 28710)

P.O. Box 7131
Chicago, IL 60680-7131
(312) 240-0824